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In the Supreme Court of the United States.

OCTOBER TERM, 1906.

THE UNITED STATES, *ex Rel.* REBECCA J. TAYLOR, plaintiff in error,
vs.
WILLIAM H. TAFT, Secretary of War.
} No. 300.

REPLY RESISTING MOTION TO DISMISS.

The indulgence of this Honorable Court is invoked while a few features, some no doubt commendable if some be otherwise, are pointed out which render the brief in support of the motion to dismiss one requiring unusually close scrutiny. Its brevity, its air of frankness, its fluent diction, and its persuasiveness are so skilfully blended as at once to enthrall unsuspecting confidence and defy alert criticism. These features, even if unaccompanied by others, would betray the master mind, the trained intellect, the life-long lawyer, and all that in a single individual of native ability constitute a superlative greatness, such as (to briefly paraphrase an encomium by a famed litterateur of great authority) has not elsewhere been observed in our day. "No pent-up Utica contracts his powers."

Rash indeed would he be who should set out boldly to expose any features deemed questionable therein, or try openly to stem the irresistible flow of sophism which he may clearly discern issuing from beyond and above the ostensible author. It behooves him, then, to ponder well the wisdom of Sir Philip Francis, who did not fail to

recognize in the very outset of those efforts which were to immortalize the JUNIUS pseudonyme that "more must be understood than may be safely expressed." Thus pondering, he will hardly venture beyond a halting propounding of a few feeble, if not fatuous, interrogatories.

For instance, on page 1 of the brief, a sentence ends with "and making some very serious reflections on the President of the United States." Is there anything in the transcript in this case that justifies counsel in any such statement? No such thing was set out in the charge made as to the cause for which the punishment was inflicted that formed the basis of the complaint upon which this suit was founded, as will later be shown. Then why inject that statement, implying, as it does of necessity, an imputation upon a newspaper of character and standing second to none — a periodical than which none in the land is more careful and select regarding communications offered it for publication — unless in reality for the purpose of infecting those for whom intended with a prejudice in advance against the plaintiff in error?

Why was not section 234 of the District of Columbia Code presented on p. 4 so as to comprise all the "right to a writ of error to the Supreme Court" in one showing? That section is very brief, *if* not very significant.

Why were not asterisks placed, or some indication made that the sentence and paragraph quoted on p. 6 were not joined in the original — separated as they were by at least a full page of matter? That first sentence, from the world's highest living judicial authority, was quoted in the South Carolina case cited on p. 5, along with its immediately succeeding sentence: "The validity of a statute or the validity of an authority is drawn in question when the existence, or the constitutionality, or the legality of such statute or authority is denied, and the denial forms the subject of direct inquiry." (153 U. S. 285). So much from the standpoint of the decalogue.

Now the claim that "The plaintiff in error does not question the authority of the President or his proper subordinates to dismiss her when the required formalities have been complied with," and that "the contention is that this authority was not exercised in the proper manner" is misleading and unfair in that it but states part of the truth. A casual examination of the pleadings will show that she *does* question all authority to dismiss her, however scrupulously the

formalities may have been observed, if that authority was exercised, as she claims it was, without " just cause " as provided by law, without authority of law, in violation of law, and, high over all else, in violation of her rights and privileges under the Constitution of the United States; as appears in the following extracts, the indicated underscorings in which are made by her counsel with a view to the convenience of this Honorable Court.

3. That heretofore, to wit, on the 24th day of January, A. D. 1900, by *virtue of the authority vested in the Secretary of War by several statutes in such case made and provided*, the petitioner was duly and legally appointed a temporary clerk in the office of the Adjutant General of the War Department, such appointment taking effect from the first day of January, 1900, and she immediately thereafter took the prescribed oath of office and entered upon her duties prescribed by law, which duties from that time until the seventh day of June, A. D., 1902, she faithfully, efficiently and continuously performed.

4. That *by certain provisions of an act of Congress* entitled " An act making appropriations for the legislative, executive and judicial expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and three, and for other purposes," approved April 28, 1902, the petitioner and other clerks similarly appointed and employed in the War Department, were transferred to the competitive classified civil service of the United States and thereby became and were subject to the provisions and entitled to the benefits of the act of Congress, entitled " An Act to regulate & improve the civil service of the United States," approved January 16, 1883, and the rules and regulations promulgated by the President of the United States *by virtue and in the exercise of the power and authority by said act*, THE CONSTITUTION OF THE UNITED STATES, *and section 1753 of the Revised Statutes of the United States, conferred upon and vested in him.*

5. That among the said rules and regulations promulgated by the President by virtue and in the exercise of the power and authority conferred upon and vested in him by said Constitution, section 1753 of the Revised Statutes of the United States and the act of Congress, entitled " An act to regulate and improve the civil service of the United States," approved January 16, 1883, and sometimes called " the civil-service law," were the following :

"Rule II."

* * * "3. No person in the executive civil service shall dismiss, or cause to be dismissed, or make any attempt to procure the dismissal of, or in any manner change the official rank or compensation of any other person therein because of his political or religious opinions or affiliations." * * *

"8. No removal shall be made from the competitive classified service except *for just cause and for reasons given in writing; and the person sought to be removed shall have notice and be furnished a copy of such reasons*, and be allowed a reasonable time for personally answering the same in writing. Copy of such reasons, notice and answer, and of the order of removal shall be made a part of the records of the proper department or office; and the reasons for any change in rank or compensation within the competitive classified service shall also be made a part of the records of the proper department or office."

That said rules as aforesaid, so promulgated by the President, were binding upon the defendant, who could not lawfully violate, disregard or evade them.

6. That in violation, disregard and evasion of said rules *and of the petitioner's rights* in the premises, the defendant undertook to illegally and unlawfully remove her from the competitive classified civil service.

. . . . . .

7. The petitioner further avers that the letter and endorsement received by her as set forth in the preceding paragraph of the petition, did not constitute the reasons required to be in writing by section 8, of civil-service rule No. 2, set forth in paragraph 5 of this petition, where a removal of an employee from the competitive classified civil service *for just cause* is contemplated, nor did they constitute a copy of such reasons, nor the notice required by said civil-service rule. But the petitioner further avers that though she received no copy of reasons in writing for her attempted removal from office, nor the notice required by said civil-service rule, she believes and therefore avers and expects to show by competent evidence that the reason why the defendant did so as aforesaid attempt to unlawfully remove her from the competitive classified civil service, was because she held political opinions and views differing from those of the defendant and gave expression to them in the public press by the letter that she wrote to the Washington Post, a copy of which she has hereto annexed and made a part hereof, marked "R. J. T., No. 1;" and because she held (and

still holds) the political opinions and views set forth in her said letter, and procured the publication of the same, the defendant in violation, disregard and evasion of the aforesaid sections of civil-service rule 2, set forth in paragraph 5, of this petition, and *unlawfully and in violation of the petitioner's rights thereunder*, GUARANTEED TO HER BY THE CONSTITUTION OF THE UNITED STATES, attempted to remove her from the position she occupied in the competitive classified civil service, as hereinbefore set forth.

The demurrer of the petitioner, now plaintiff in error, was accompanied by the following:

Among the points of law intended to be argued at the hearing upon the above demurrer, are

. . . . . .

2. That the said respondent attempted to remove said petitioner from the competitive classified civil service of the United States, *without warrant or authority of law.*

3. That the said respondent attempted to remove said petitioner from said services without just cause.

. . . . . .

7. That the respondent, as Secretary of War, or any other head of an executive department of the Government of the United States *has no constitutional right of removing subordinates in violation of the laws of Congress or of rules promulgated by the President thereunder* or otherwise.

8. That the power of appointment and removal of the respondent as Secretary of War or of any head of an executive department, is regulated and limited by the laws of Congress and the rules promulgated by the President thereunder.

9. That a subordinate officer or employee of the United States Government, *appointed to office by virtue of the Constitution and laws of Congress, made thereunder*, has a vested right to such office until removed by the proper authorities acting within the scope of their powers and such a right is cognizable and may be enforced by a court of law.

10. That the reasons for the attempted removal of the petitioner, assigned by the respondent *post litem motam* did not constitute the "just cause" contemplated by the aforesaid section 8, of civil-service rule 2.

11. That the writing by the petitioner of the letter of May 12, 1902, set forth in said petition, did not constitute a reason or "just cause" for the removal of said petitioner from her said office.

. . . . . .

13. That the petitioner's said letter of May 12, 1902, was the public expression of her political opinions upon certain political views and policy of the President of the United States, *the freedom to express which is guaranteed to her by the Constitution of the United States;* and such public expression of her political opinions is also protected by the aforesaid section 3, of civil-service rule 2, and does not constitute the "just cause" for removal from her said office contemplated by the aforesaid section 8, of civil-service rule 2.

14. That the petitioner has by the facts set out in her petition, and admitted by the respondent in his answer thereto, shown a right to her position as a clerk in the competitive classified civil service of the United States and that this court should, by a mandamus, restore her to her said position.

Paragraph 2 directly questions the validity of the authority exercised claiming that the Secretary of War had no authority.

It is true that the pleadings also question the manner in which the authority was exercised, the formalities which the Solicitor-General refers to, but as appears from the pleadings this is not the vital point, which is that there is no authority anywhere to remove except for just cause, and that there was no cause whatever for such removal. Does this not question "the validity of the authority?" Is it not a mere quibble to say that a charge of removal from office in violation of law and without authority of law raises no question of validity because it presumes there is authority to remove founded upon law? If there is no authority whatever to remove for the cause assigned, namely, writing and publishing an article, there certainly is no valid authority for so doing. Any usurpation of authority is invalid, and the claim that the authority is usurped and exercised contrary to law is based on the invalidity of the authority, and therefore raises a question of validity.

Concisely stated, the position of the plaintiff in error is this: There is no valid authority to dismiss a civil service employee in the classi-

fied list except for "just cause." To further explain, the following illustration is presented: there is no authority to dismiss a federal judge except after impeachment. If the President arbitrarily dismissed such judge, would not the validity of his authority be questioned when the judge claimed that he had been dismissed contrary to law? It would seem that the sole question in the supposed case, as in that here presented, is as to the existence of valid authority to do the act complained of, and that the validity is directly called in question.

But to make this case even stronger, were it necessary, which we claim it is not, the validity of the civil service rules themselves, established under the authority of a United States statute, are assailed by the Secretary of War himself when, in his "answer," he sets forth that they have no binding force upon him, that they are invalid in so far as they interfere with his exercise of arbitrary and unlimited power; that, to use the language of the Steinmetz case, they are invalid as an "abuse" of his discretion, that in so far as they intended, if so intended, to take away this right, they are repugnant to his "constitutional right," and, as he claims, his unlimited power of removal. He also questions the validity of the authority when he denies that these rules vest any right in an employe.

In other words the Secretary of War has claimed that the arbitrary power of removal is the true and valid authority, and that the Civil Service Rules are invalid as an invasion of such Constitutional right, and therefore directly raises, himself, the question of the validity of the authority exercised. In his "answer" is the following:

> 5. That it is true that on November 2nd, 1896, the President of the United States promulgated the certain rules set forth in the fifth paragraph of the relator's petition. But the respondent says that such rules are, in law, administrative directions or instructions from the President to those holding office by virtue of his appointment indicating the manner in which they shall exercise their duties as his agents in the removal of subordinates, and have no other *full* effect or virtue whatsoever.
>
> And this respondent further says that such orders, directions or instructions were not intended, and if so intended, could not have the effect to restrict in anywise the constitutional right and power of this defendant as the head of a department of the

> Government to appoint and remove such inferior officers in said department as are provided for by the Congress of the United States; nor do such orders, directions or instructions have force, effect or virtue to vest in any employee any right cognizable in a court of law in the enforcement of or obedience to such instructions, or to make the head of any executive department answerable to the judicial power for any supposed violation, disregard, evasion or disobedience of the same; but for all violation, disregard, evasion or disobedience thereof the head of each executive department is answerable only to the President, in whom the executive power is vested by the Constitution.

The civil service rules, to incorporate the words of the Court in the Steinmetz case, " Became a rule of procedure and constituted, in part, the powers of"—the Secretary of War. " In other words, it became an authority of the "—Secretary of War " and, necessarily, an authority ' under the United States.' " Their " validity was and is assailed by the " Secretary of War. He claims that they have no " virtue " whatever to restrict in any way his constitutional right and power, which, he claims, is unlimited. Having himself put in question, squarely, the validity of the regulations, he cannot be heard to say that the Court has not jurisdiction.

The cases cited by the Solicitor-General do not apply, because in those cases the validity of the authority was not questioned. The Steinmetz case, referred to by him, is in our favor in that it decides:

1. That in a suit in which the validity of a regulation established under the authority of statute is assailed, the question of the validity of an authority exercised under the United States is raised.

2. That "Some discretion is not an unlimited discretion, and if the discretion is not unlimited it is reviewable." It was set forth in the pleadings that the discretion of the Secretary of War in the matter of removals is not unlimited; that the Civil Service Law and Rules and the Constitutional guarantee limit him in certain respects as set forth; hence, the discretion being not unlimited, the case is reviewable.

It may be said without imputing wrong to any man that human nature is no more absent in high places than in low. I am led thus to remark, by considerations implied in my opening paragraphs; by imputations recently cast, at least by necessary implication and inference

according to the public press, upon our judiciary by a magistrate than whom none stands higher; by some experiences hitherto of the plaintiff in error, herself; by the lessons of history; by consciousness of the reality of the grounds for the familiar adage "Where there's a will there's a way;" by the fate of the venerable Baxter according to Macaulay (I, 318), and kindred facts from the most accredited historians; and, above all, the deplorable conditions now existing, as never in our whole history they did so exist until the decade now drawing to a close. All these clearly admonish not too closely to model after the most admirable feature of the brief of the defendant in error—its portentous brevity—and I beg to submit a few more observations.

> A case may be considered to arise under the Constitution or a law of the United States whenever its correct decision depends upon the construction of either.
>
> *Cohen* v. *Virginia*, 6 Wheaton, 375.

> Or whenever the rights set up by a party may be defeated by one construction or sustained by the opposite construction.
>
> *Osborne* v. *Bank of U. S.*, Wheat., 738.
>
> *Starin* v. *New York*, 115 U. S., 248.

> The jurisdiction for review of the judgments of courts extends to adverse decisions upon rights and titles claimed under the Constitution, laws or treaties of the United States.
>
> *Carson* v. *Dunham*, 121 U. S., 321.

> When the decision is against the right claimed under the Constitution or laws of the United States a writ of error will lie to bring the judgment of the court before this court for re-examination and revision.
>
> *Ableman* v. *Booth*, 21 How., 506.

> If a question is fairly presented by the record, and its decision is necessary to the determination of the case, a judgment which rejects the claim but avoids all reference to it, is as much against the right as if it had been specifically referred to, and the right directly refused.
>
> *Chapman* v. *Goodnow*, 123 U. S., 540.

The power of appointment is regulated by law. *The power of removal is also regulated by law. Since it is regulated by law*, the head

of any executive department is answerable to the law, to the judicial power for all "violation, disregard, evasion, or disobedience" of the law. He is answerable, *not to the President*, as defendant claims, whose duty it is, *not to interpret the law, but to see that the law is faithfully executed, after it has been interpreted by the judicial power.* The Secretary of War may exercise *limited discretion* upon matters pertaining to departmental regulations as head of the Executive Department; he cannot sit in final judgment upon a point of law, where there is a contest involving a question of personal rights, without invading the constitutional domain of the judiciary, and it will not be denied that such points of law are involved in this case. The framers of the Constitution made the powers of the three branches of the Government as distinctly separate as possible, and any interference of the one with the other is clearly a usurpation of power. But, in spite of this, is it contended in this case by the Secretary of War that his power of removal is limited only by *expediency*, and not by law; and that his acts are not reviewable by the tribunals of justice established for the purpose of interpreting and enforcing the law, and, therefore, that he may override the rights of every employe of his Department, at his pleasure.

My contention is that the jurisdiction of the Judicial Department of the Government is co-extensive with that of the legislative department, or rather that it is co-extensive with the laws of the United States. That it involves the interpretation of every rule which has the force of law, and therefore the authority to examine every rule in order to determine whether it has the force of law or not, including even the Rules of the House of Representatives and the Senate, and those of the Executive Department. It certainly has in a case regularly brought before it, the right to examine any official act of any officer, and to determine whether it violates the Constitutional or other right of any citizen.

In *Kilbourn vs. Thompson*, 103 U. S., 168, 199-200, the Court took cognizance of the Rules of the House of Representatives, and, after examining them with reference to the facts in that case, declared that "there is not found in the Constitution of the United States any general power vested in either House to punish for contempts," and therefore, "that the order of the House declaring Kilbourn guilty of

contempt of its authority, and ordering his imprisonment by the Sergeant-at-Arms, is void, and affords the latter no protection in an action by Kilbourn against him for imprisonment." Neither is there found in the Constitution power vested to punish by removal or otherwise for the freedom of speech, the liberty of the press or the free exercise of religion.

Now, if the Courts have jurisdiction of such cases as these — cases involving the validity of the rules of the House of Representatives — why have they not jurisdiction to interpret and enforce the Civil Service rules, or any rule made by the President relating to the Civil Service? Why have they not jurisdiction to inquire into and pass upon any act of a ministerial officer? In the case above cited the Court, speaking through Justice Miller, said:

> "We have found no better expression of the true principle of this subject, than the following language of Mr. Justice Hoar in the Supreme Court of Massachusetts, in the case of *Burnham vs. Morrissey*, 14 Gray, 226. The opinion, or statement rather, was concurred in by all the court, including the venerable Chief Justice Shaw."

He then quoted the following:

> "The House of Representatives is not the final judge of its own power and privileges in cases in which the rights and liberties of the subject are concerned, but the legality of its action may be determined by the court. That House is *not the legislature, but only part of it*, in common with all other bodies, officers, and tribunals within the Commonwealth. Especially is it competent and proper for this court to consider whether its proceedings are in conformity with the Constitution and laws, because living under a written Constitution, no branch or department of the Government is supreme; and it is the *province* and duty of the judicial department to determine, in cases regularly brought before them, whether the powers of any branch of the Government, and even those of the legislature in the enactment of laws, have been exercised in conformity to the Constitution; and if they have not, to treat their act as null and void. (Burnham *vs.* Morrissey, 14 Gray, 226)."

Justice Miller, speaking for the Court, added:

"In the statement of the law, and in the principles there laid down, we fully concur. We must, therefore, hold, notwithstanding what is said in the case of *Anderson vs. Dunn*, that the resolution of the House of Representatives finding Kilbourne guilty of contempt, and the warrant of its Speaker for his commitment to prison, are not conclusive in this case, and in fact are no justification because, as the whole plea shows, the House was without authority in the matter. (103 U. S., 199-200.)

In the following cases, and many more, support may be found for the contention of the plaintiff in error:

N. Y. Juvenile Society vs. Roosevelt, 7 *Daly* 191.
Daily vs. San Francisco City and Co. (*Cal.*) 32 *L. R. A.* 273.
Life Ins. Assn. vs. Boogher, 3 *Mo. App.* 173.
Commonwealth vs. Camble, 62 *Pa. St.* 343.
Commonwealth vs. Mann, 5 *W. N S.* 403.
Peo vs. Dubois, 23, *Ill.*, 547.
Louthan vs. Com. Va. 79 *Va.* 198-208.
Cooley on Constitutional Limitations, p. 520-1.
Yick Wo vs. Hopkins, 118 *U. S.* 367-374..
Cummings vs. St. of Mo., 4 *Wall.*
7 *Hamilton*, 333.
Story on Equity Jurisprudence, Vol. 2, Sec. 948*A.*
Newton vs. Bd. of Comms. 100 *U. S.* 548.
People vs. Loeffler, 175 *Ill.* 585.
Madison's Minutes Vol. 4, *p.*. 540.
Ex Rel. Munday vs. Fire Comms.
Butler vs. White, 83 *Fed.* 578.
Pro ex rel. Dickels vs. Stark, 33 *Hun.* 384.
People vs. McCabe vs. Fire Comms. 43 *Hun.* 554.
Peo. vs. Campbell, 82 *N. Y.* 247.
U. S. vs. Perkins, 116 *U. S.*" 483-5.
Peo. vs. ex rel Kennedy vs. Brady, 166 *N. Y.* 44.
Miller vs. Elmendorff, 51 *App. Div. N. Y.* 173.
Ex Parte Curtis, 103 *U. S.* 371.
Field vs Clark, 143 *U. S.* 695-692.
Wayman vs. Southard, 10 *Wheat.* 41-7.
White vs. Toledo 79 *Fed.* 135.
In re Collock, 165 *U. S.* 526.
U. S. vs. Ford, 50 *Fed.* 468-9.

U. S. vs. Bailey, 9 *Peters*, 256.
Cariot vs. U. S., 4 *How.* 117.
U. S. vs. Symonds, 120 *U. S.* 49-50.
Smith vs. Whitney, 116 *U. S.* 181.
Ex parte Reed, 100 *U. S.* 13.
U. S. vs. Eliason, 16 *Peters*, 301-2.
U. S. vs. Ormsbee, 74 *Fed.* 207.
Caha vs. U. S., 152 *U. S.* 212.
Cummings vs St. of Mo., 4 *Wall.* 323.
Church of the Holy Trinity vs. U. S., 143 *U. S.* 460-2.
U. S. vs. Fisher, 2 *Cr.* 358, 386.
Wilson Co. vs. Bank, *U. S.* 770-8.
Durousseau vs. U. S., 6 *Cr.* 314.
Peo. vs. Kipley, 157 *Ill.*
Marbury vs. Madison, 1 *Cr.* 162.
Priddie vs. Thompson, 82 *Fed.* 186.
Butler vs. White, 83 *Fed.* 578.
Payne vs. Nat. Railway Pub. Co.
Butterworth vs. Hoe, 112 *U. S.* 68.
Tate vs. Dalton, 158 *N. Y.* 204.
Teal vs. Melton, 12 *How.* 285.
U. S. vs. Symonds, 120 *U. S.* 47.

President Roosevelt, while Civil Service Commissioner, referring to the Government clerk, said: "His position should depend in no way upon his party predilections, for his capacity to perform his duties has not the slightest reference to his opinions upon the tariff, the currency or any other of the great questions upon which the parties divide."

Can there be a question of greater moment than that which took precedence of all other issues on which the great parties divided in the campaign preceding, and in large measure inspiring, the letter to *The Post*? Could any publication be of a cast, considering the time and topic, more distinctively political? Many judicial assumptions crept into the record of the trial court, without evoking rebuke in the court next higher; that this publication savored of license was, not having the warrant of a jury's verdict, perhaps the most gratuitous. Which makes it my plain duty to the plaintiff in error to inform this Honorable Court that a compilation of "frozen facts" from published official documents makes the *Post* publication seem, by comparison,

tame and colorless. Still more imperative becomes my duty in view of the repetition and reiteration of that imputation in the suspiciously laconic brief on behalf of the defendant in error. The publication of said facts was financed, it is understood, by persons constituting, wholly or in part, a campaign committee; and the *Post's* correspondent was deeply versed in the contents of that work. What wonder that her womanly sensibilities were stirred to their depths by its unspeakably horrible revelations! Like Judge Parker's recitals concerning the vast contributions to a campaign fund, and their sources, it came into the contest too late to reverse the political trend. This is, of course, no occasion for the proffer of amenities. Were it so, I could not forbear rendering homage to that warm blood, coursing here, believed to have impelled to generous aid of the worthy object above indicated; and also to those strains, derived from Scottish ancestry, that cannot but recognize, with a sense of sorrow and generous indignation, the long stride evidenced in said work toward comparative respectibility to which its facts raise, at last, the dread names of Claverhouse and Killiecrankie.

Yet, in tribute to that sterling spirit here which manifested itself gloriously on both sides in the time that tried the souls of MEN; at the same time presenting an item of obvious interest for the world's foremost spelling reformer; and, by no means of least import, emphasizing the fact of the judicial assumption below that because a womanly spirit "has shown herself to be a very intelligent woman," she should be denied those rights accorded, when not withheld by usurpation, to her as well as to every other American citizen—a quotation is submitted, taken from a periodical which has been specially favored by our Chief Executive, as also by his immediate predecessor, and, in view of all the foregoing, deemed for this occasion not altogether mal-apropos:

> "Before your peerless parent first "took a shy at oil," a placid stream meandering by Zachary Taylor's birth-place was the Rapid Ann. Then, within the period of a single Presidential term, more human blood coursed down the slopes and tributary channels to mingle with the gurgling waters of that small river than, in all the ages, had accompanied the historic Tiber to the sea; and in it all not a drop was that of any slain

woman, or of any babe wounded at maternal breast, or of any maid shot down at her nuptial festival,— being all contributed by fighting men, nearly all of whom were more than double "the age of ten;" and no priest for his Peter's pence, no parson for his pesos, no American mother's boy for his hate of dastards or diabolism, unto a dismal death was watercured. Ere ended that Titanic struggle, the inner capital was wrested from Rapid Ann—note "capital," mark well the "A"—since which, Rapidan and Tiber touch elbows in the grand processional of writ history and song and romance; for, so high, so clean, so sound the cause, as it were Greek meeting Greek, no descendant of fallen worthy need blush at thought of *that* ancestral strenuosity."

Mr. Justice McKenna has kindly supplied (192 U. S. 556) our closing suggestion: "The validity was and is assailed by the plaintiff in error. We think, therefore, we have jurisdiction, and the motion to dismiss is denied."

NOBLE E. DAWSON,
Counsel for Plaintiff in Error.